

April 16, 1953
Opinion No. 53-76

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ARIZONA ATTORNEY GENERAL

TO: Mr. James D. Kaffenberger
State Egg Inspector
Capitol Building
Phoenix, Arizona

RE: Power of Egg Inspector to declare
an emergency.

QUESTION: Is the State Egg Inspector compelled
to find and declare that an emergency
exists upon written application of
any producer, or is this power dis-
cretionary?

The Arizona Egg Act provides that it is unlawful to sell to
retailers or consumers ungraded eggs except when the State Egg
Inspector declares an emergency to exist, Section 68-920, A.C.A.
1939, as amended:

"68-920. Unlawful sales--Unlawful designations.--
(a) It is unlawful to sell to retailers or con-
sumers, eggs ungraded as to quality or size, ex-
cept that the state egg inspector, upon the written
application of any producer, may find and proclaim
that an emergency exists which prevents the normal
marketing of eggs by the applicant and other pro-
ducers, upon request, in the same area. During
such emergency it shall be lawful for such producers
to sell to retailers or consumers eggs produced upon
the premises of such producer which are ungraded
as to size and quality, and for retailers to sell
such eggs to consumers; provided, that each placard
for bulk lots, case, half-case or container of
such eggs and all invoices and advertising relat-
ing to such eggs shall be clearly marked 'Emergency,
ungraded' and shall bear the name and address of
the producer." (Emphasis supplied)

This statute states that the Inspector "may" find and proclaim
an emergency to exist upon the written application of any producer.

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Webster's Unabridged Dictionary declares that "where the sense, purpose or policy of a statute requires it, 'may' as used in the statute will be construed as must or shall; otherwise 'may' has its ordinary permissive and discretionary force."

The Arizona Supreme Court has interpreted the meaning of the word "may" in a number of cases. FRYE v. SOUTH PHOENIX VOLUNTEER FIRE CO., (1950) 163 Ariz. 71:

"In determining whether the word 'may' as used in the act under consideration is permissive or mandatory, if it cannot be gathered from the language used therein, the court must look to the words, context, subject-matter, effects and consequences as well as to the spirit and purpose of the law. Coggins v. Ely, 23 Ariz. 155, 202 P. 391 (citing cases). We must also, if possible, give meaning to each word, clause or sentence, considered in the light of the entire act itself and the purpose for which it was enacted into law. State v. Airesearch Mfg. Co., Inc., 68 Ariz. 342, 205 P. 2d 562, 567. We also said in that case:

* * * The aim of the court likewise should be to give it (the law) a sensible construction such as will accomplish the legislative intent and if possible avoid an absurd conclusion or avoid making the statute invalid. * * *

In the instant case the Legislature prescribed standards and regulations for the production and distribution of eggs and egg products. It also established the State Egg Inspector as the enforcing agent under the act. Section 68-938, A.C.A. 1939:

"68-938. State egg inspector. -- * * *

(e) The duties of inspectors shall be to inspect, weigh and examine dried eggs, frozen eggs and eggs in the shell being advertised or offered for sale to determine the condition, quality, grade and weight thereof. They may examine records of any one advertising or offering for sale, eggs or egg products. They shall enforce the provisions of this act and all other laws relating to the sale of eggs."

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If the State Egg Inspector was "compelled" to declare an emergency to exist upon the written application of any producer, that producer could cause a continual state of emergency to exist on any pretext and thereby circumvent the purpose of the act by avoiding a large number of the provisions of the act. In the light of the case of FRYE v. SOUTH PHOENIX VOLUNTEER FIRE CO.,^{supra}, it therefore becomes evident that the use of the word "may" in the statute in question must be given its usual permissive and discretionary force in order to avoid an absurd conclusion.

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